

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM W. LUMPKINS,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. 3:22-cv-5852-JNW

ORDER GRANTING PETITIONER'S
MOTION FOR APPOINTMENT OF
COUNSEL

1. INTRODUCTION

This matter comes before the Court on Petitioner William W. Lumpkins's motion to appoint counsel. Dkt. No. 20. Respondent Jason Bennett did not respond. For the reasons discussed below, the Court GRANTS Lumpkins's request for counsel, contingent on locating counsel that would be willing to represent him.

2. BACKGROUND

On October 16, 2015, in the Superior Court of Washington for Grays Harbor County, a jury found Lumpkins guilty of first-degree rape and second-degree assault with sexual motivation. Dkt. No. 12-1 at 40. On December 4, 2015, the trial court imposed concurrent indeterminate sentences of 184 months to life on the rape

1 conviction and 53 months to life on the assault conviction. *Id.*; *see also id.* at 25.
2 After a partially successful appeal, the trial court entered judgment against
3 Lumpkins on the first-degree rape charge and dropped the sexual assault charge.
4 *Id.* at 2.

5 Lumpkins petitioned for post-conviction relief in the state courts. Because the
6 Court previously recounted the full procedural history in its prior order, it does not
7 provide those details here. *See* Dkt. No. 18 at 2–3. After seeking post-conviction
8 relief in the state court, Lumpkins petitioned for a writ of habeas corpus in federal
9 court raising four grounds for relief: (1) the state failed to prove sexual
10 intercourse—an essential element of his rape conviction; (2) he received ineffective
11 assistance from his counsel because his lawyer failed to properly call and subpoena
12 the Y-STR DNA analyst as an expert witness; (3) the state engaged in prosecutorial
13 misconduct by arguing Lumpkins used a condom, even though Lumpkins argues no
14 evidence supported that statement; and (4) the state presented the victim with a
15 tainted photo montage that included a picture of Lumpkins photoshopped from his
16 Illinois identification card that police unlawfully seized. Dkt. No. 7 at 5–10.
17 Although Respondent Jason Bennett opposed the petition on the merits, he
18 acknowledged “Lumpkins properly exhausted his claims by fairly presenting the
19 claims to the Washington courts[.]” Dkt. No. 11 at 6.

20 The Honorable David W. Christel, United States Magistrate Judge, issued a
21 report and recommendation finding the state court’s adjudication of grounds one,
22 two, and three was not contrary to, nor an unreasonable application of, clearly
23 established federal law. Dkt. No. 13 at 19. He also concluded that ground four did

1 Similarly, the Court cannot appoint publicly funded counsel. “The Supreme
2 Court has declared that ‘the expenditure of public funds [on behalf of an indigent
3 litigant] is proper only when authorized by Congress[.]’” *Tedder v. Odel*, 890 F.2d 210,
4 211 (9th Cir. 1989) (quoting *United States v. MacCollom*, 426 U.S. 317, 321 (1976)).
5 Congress has not provided funds to pay counsel secured under 28 U.S.C. § 1915(e). *See*
6 *United States v. 30.64 Acres of Land, More or Less, Situated in Klickitat Cnty., State of*
7 *Wash.*, 795 F.2d 796, 801 (9th Cir. 1986).

8 The decision to request *pro bono* counsel rests within “the sound discretion of the
9 trial court and is granted only in exceptional circumstances.” *Agyeman v. Corrections*
10 *Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004) (internal quotation omitted). To
11 decide whether exceptional circumstances exist, the Court must evaluate both “the
12 likelihood of success on the merits [and] the ability of the [plaintiff] to articulate [their]
13 claims *pro se* in light of the complexity of the legal issues involved.” *Wilborn v.*
14 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d
15 952, 954 (9th Cir. 1983)). Neither of these factors is dispositive, and the factors must be
16 viewed together before reaching a decision regarding appointment of counsel. *Id.* at
17 1331.

18 In response to the Court’s order for supplemental briefing Lumpkins stated
19 he is “not sure what [he’s] supposed to write a brief on” and that he needs legal
20 help. Dkt. No. 20. The remaining issues in this matter involve exhaustion, a
21 complicated procedural matter.

22 Although Lumpkins demonstrated he can independently file a petition, the
23 Court agrees that the exhaustion issue presented by this case is complex and

1 requires sophisticated legal analysis. As a result, the Court finds that Lumpkins's
2 case is appropriate for the Court to request appointment of pro bono counsel.

3 **4. CONCLUSION**

4 Accordingly, the Court GRANTS Lumpkins's motion for appointment of
5 counsel, Dkt. No. 20—contingent on identifying a pro bono attorney who is available
6 and willing to accept such an appointment.

7 The Court directs the Clerk of Court to take the necessary steps to try and
8 identify an attorney or law firm from the Court's Pro Bono Panel to represent
9 Lumpkins, even if only on a limited basis, in this case. The scope of the engagement
10 will ultimately be between the attorney and client. The Court advises Lumpkins
11 that it cannot force an attorney to take this case, and it is possible that a pro bono
12 attorney will not be found, and that he will remain unrepresented. If the Court
13 cannot locate an attorney willing to represent Lumpkins, it will notify the parties
14 that its inquiry was unsuccessful.

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16 Dated this 11th day of October, 2024.

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19 Jamal N. Whitehead
20 United States District Judge
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